

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America,

Plaintiff,

v.

**MEMORANDUM OPINION
AND ORDER**

Crim. No. 19-112 (01) (MJD)

Jerry Leavale Hicks,

Defendant.

Benjamin Bejar, Assistant United States Attorney, Counsel for Plaintiff.

Defendant, *Pro Se*.

This matter is before the Court on Defendant's motion for reconsideration of the February 1, 2021 Order denying his motion for compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A)(i). [Doc. No. 123]

I. Background

Defendant pleaded guilty to Counts 1, 2, 4 and 6 of the Indictment which charged Interference with Commerce by Robbery in violation of 18 U.S.C. § 1951. On June 11, 2020, Defendant was sentenced to term of imprisonment of 70 months on each count, to be served concurrently, followed by three years

supervised release. He is currently serving his sentence at Rochester FMC, and his release date is August 23, 2024.

By Order dated February 1, 2021, this Court denied Defendant's motion for compassionate release because Defendant had failed to demonstrate that his medical condition constituted extraordinary and compelling circumstances warranting relief and because the factors set forth in 18 U.S.C. § 3553(a) did not support a sentence reduction.

II. Motion for Reconsideration

The Eighth Circuit has not determined whether to import the civil standard for motions for reconsideration into the criminal context. United States v. Luger, 837 F.3d 870, 875-76 (8th Cir. 2016). That being said, in civil cases, a motion for reconsideration serves the limited purpose of correcting manifest errors of law or fact or presenting newly discovered evidence. Id.

III. Discussion

Defendant argues that he is entitled to relief because courts have broadened what can be considered "extraordinary and compelling" reasons to warrant relief under 18 U.S.C. § 3582(c). He further asserts that he suffers from chronic primary hypertension, elevated blood glucose and from Long-COVID

symptoms such as difficulty breathing with asthma, causing him to need an inhaler. Defendant also cites to new concerns as a result of the delta variant, and requests the Court grant his motion for a sentence reduction.

The government opposes the motion. Defendant is now fully vaccinated, and his medical records show that his health conditions have improved. Further, Defendant's place of incarceration, Rochester FMC, has no current active COVID inmate cases, four positive staff cases and no deaths.

Based on the record before, the Court finds that Defendant has not demonstrated the February 1, 2021 Order is based on a manifest error of law or fact and has not presented newly discovered evidence warranting relief.

Accordingly,

IT IS HEREBY ORDERED that Defendant's Motion for Reconsideration [Doc. No. 123] is DENIED.

Date: August 24, 2021

s/Michael J. Davis

Michael J. Davis

United States District Court